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FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

1 SEP 11 2006 *AK*

at 3 o'clock and 44 min. P.M.
 SUE BEITIA, CLERK

Attorneys for Defendant/Limitation Plaintiff
MORNING STAR CRUISES, INC.

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF HAWAII

In the Matter of	) CV. NO. 03-00672 SOM-BMK
)
The Complaint of MORNING STAR)
CRUISES, INC., a Hawaii corporation.)
)
SHIROH FUKUOKA, Individually and	) CV. NO. 04-00588 SOM-BMK
as Personal Representative of THE)
ESTATE OF MITSUKO FUKUOKA,	) [CONSOLIDATED]
and as Next Friend of MIHO)
FUKUOKA, a Minor,	) REPLY MEMORANDUM TO
	) LIMITATION DEFENDANTS'
Plaintiffs,	) MEMORANDUM IN
	) OPPOSITION TO MOTION TO
vs.	) DISMISS PLAINTIFFS' CLAIMS
MORNING STAR CRUISES, INC., a	) AND FOR ATTORNEY'S FEES
Hawaii corporation; JOHN DOES 1-	) AND COSTS [DATED 7/12/06]
	) FILED 8/3/06; DECLARATION
	OF GREGORY K. MARKHAM;

10, JANE DOES 1-10, DOE	)	OF GREGORY K. MARKHAM;
CORPORATIONS 1-10, DOE	)	CERTIFICATE OF SERVICE
PARTNERSHIPS 1-10, DOE JOINT)	
VENTURERS 1-10, DOE LIMITED)	
LIABILITY ENTITES 1-10, DOE	)	Date: September 22, 2006
NON-PROFIT ENTITES, 1-10, DOE	)	Time: 2:00 p.m.
GOVERNMENTAL ENTITIES 1-10,	)	Judge: Magistrate Barry M. Kurren
DOE UNINCORPORATED)	
ENTITIES 1-10, and OTHER DOE	)	Trial: February 21, 2007
ENTITES 1-10,	)	Time: 9:00 a.m.
Defendants.	)	Judge: Hon. Susan Oki Mollway
)	

REPLY MEMORANDUM TO LIMITATION DEFENDANTS'
MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS
PLAINTIFFS' CLAIMS AND FOR ATTORNEY'S FEES AND COSTS
[DATED 7/12/06] FILED 8/3/06

I. INTRODUCTION

Morning Star Cruises, Inc. ("Morning Star"), by and through its attorneys, the law firm of Chee & Markham, hereby replies to Limitation Defendants' Memorandum in Opposition to Morning Star Cruises Inc.'s Motion to Dismiss Plaintiffs' Claims and for Attorneys Fees and Costs [Dated July 12, 2006] Filed August 3, 2006.

II. ARGUMENT

Limitation Defendants' argument that they provided Morning Star with discovery responses and responsive documents on July 12, 2006, the date the Motion to Dismiss was filed, is factually incorrect. While Limitation Defendants

attorney did untimely submit answers to interrogatories on July 12, 2006¹, the responses submitted by Limitation Defendants' counsel were not signed or verified by Limitation Plaintiffs. Morning Star did not receive verified Answers to Interrogatories until August 21, 2006, more than two months after the due date set by this Court's order.

The fact that Limitation Defendants have finally responded to Morning Star's discovery requests does not excuse their failure to comply with the Federal Rules of Civil Procedure and this Court's Order. See *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 947 (9th Cir.1993) (Order of dismissal affirmed: Court "squarely rejected" proposition that failure to comply with discovery requests was "purged" by later compliance.); *North Am. Watch Corp. v. Princess Ermine Jewels*, 786 F.2d 1447, 1451 (9th Cir.1986) (order of dismissal affirmed: "Belated compliance with discovery orders does not preclude the imposition of sanction."); *G-K Properties v. Redevelopment Agency of San Jose*, 577 F.2d 645, 647-48 (9th Cir.1978) (order of dismissal affirmed: "last minute tender" of discovery does not cure effects of discovery misconduct.). Limitation Defendant's

Despite Limitation Defendant's nearly two-and-a-half year delay in responding to Morning Star's discovery requests, Morning Star responded to

¹ This Court granted Morning Star's Motion to Compel Discovery and ordered Limitation Defendants to respond no later than June 15, 2006. See Order Granting Defendant/Limitation Plaintiff's Motion to Compel Discovery, Filed June 6, 2006.

Limitation Defendants discovery requests in less than three months after service, and before receiving Limitation Defendants' verified answers to interrogatories.

III. CONCLUSION

For the foregoing reasons, Defendant/Limitation Plaintiff MORNING STAR CRUISES, INC. respectfully requests that this Court grant its Motion to Dismiss Plaintiff's Claims and for Attorney's Fees and Costs.

DATED: Honolulu, Hawaii, September 11, 2006.



**GREGORY K. MARKHAM
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Attorneys for Defendant/
Limitation Plaintiff
MORNING STAR CRUISES, INC.